

REVITALIZING PRIVATEERING: COST-EFFECTIVE COMMERCE RAIDING
IN AN ERA OF GREAT POWER COMPETITION

REPORT DOCUMENTATION PAGE				Form Approved OMB No. 0704-0188	
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1. REPORT DATE (DD-MM-YYYY) 12-04-2019		2. REPORT TYPE FINAL		3. DATES COVERED (From - To) N/A	
4. TITLE AND SUBTITLE Revitalizing Privateering: Cost-effective Commerce Raiding				5a. CONTRACT NUMBER N/A	
				5b. GRANT NUMBER N/A	
				5c. PROGRAM ELEMENT NUMBER N/A	
6. AUTHOR(S) LCDR W. L. Grenoble, USN				5d. PROJECT NUMBER N/A	
				5e. TASK NUMBER N/A	
				5f. WORK UNIT NUMBER N/A	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Writing & Teaching Excellence Center Naval War College 686 Cushing Road Newport, RI 02841-1207				8. PERFORMING ORGANIZATION REPORT NUMBER N/A	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A				10. SPONSOR/MONITOR'S ACRONYM(S) N/A	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S) N/A	
12. DISTRIBUTION / AVAILABILITY STATEMENT Distribution Statement A: Approved for public release; Distribution is unlimited.					
13. SUPPLEMENTARY NOTES A paper submitted to the faculty of the NWC in partial satisfaction of the requirements of the curriculum. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.					
14. ABSTRACT Operational maritime leaders lack a cost-effective, non/low-kinetic means to degrade the force concentration of peer rivals executing an anti-access / area-denial (A2AD) strategy. A supplementary effort is needed to draw enemy combat forces away from their bastions without decreasing U.S. combat power flowing into theater. Leveraging enemy weaknesses regarding economic dependencies on the maritime domain against the U.S./allied global reach will create a strategic distraction in support of main combat efforts. New (or in this case old) techniques are needed to make up for this relative force deficiency without further taxing U.S. combat force requirements. Privateering provides a novel, unexpected change to the enemy's calculus forcing them to venture beyond their preferred defensive areas or face potential economic hardships. Privateering will not win the fight on its own, but it will make it more likely for the U.S. to achieve victory.					
15. SUBJECT TERMS (Key words) Privateering, privateer, contracting, contractor, prize, commerce raiding, China, A2AD, counter-intervention, merchant shipping					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT N/A	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON Director, Writing Center
a. REPORT UNCLASSIFIED	b. ABSTRACT UNCLASSIFIED	c. THIS PAGE UNCLASSIFIED			19b. TELEPHONE NUMBER (include area code) 401-841-6499

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Paper Abstract

Revitalizing Privateering: Cost-effective Commerce Raiding

Operational maritime leaders lack a cost-effective, non/low-kinetic means to degrade the force concentration of peer rivals executing an anti-access / area-denial (A2AD) strategy. A supplementary effort is needed to draw enemy combat forces away from their bastions without decreasing U.S. combat power flowing into theater. Leveraging enemy weaknesses regarding economic dependencies on the maritime domain against the U.S./allied global reach will create a strategic distraction in support of main combat efforts. New (or in this case old) techniques are needed to make up for this relative force deficiency without further taxing U.S. combat force requirements. Privateering provides a novel, unexpected change to the enemy's calculus forcing them to venture beyond their preferred defensive areas or face potential economic hardships. Privateering will not win the fight on its own, but it will make it more likely for the U.S. to achieve victory.

Introduction and Strategic Setting

In the event of a war, the United States lacks the forward-deployed forces needed to defeat a great power rival like China. U.S. forces from around the globe will need to flow into theater to slowly peel back the anti-access / area-denial (A2AD) or counter-intervention defensive layers of this peer adversary. This will be a slow, costly endeavor that will challenge U.S. forces with levels of combat comparable to World War II. The U.S. Navy will find itself in a fleet-on-fleet fight as it spearheads the effort to unravel the dense array of threats encompassing the disputed region. This is the Mahanian fight as our enemy sees it; we do not have to limit ourselves to meet their vision.

Consider the maritime power of China. They have ample military forces concentrated in the Pacific for projecting regional power, and they also have the world's second largest fleet of commercial maritime shipping vessels.¹ This fleet of cargo vessels operates globally to feed the export-driven economy of China. In the event of a protracted war, China will rely on this fleet of vulnerable vessels to continue operating outside China's defensive sphere to ensure its domestic economic stability. Due to its lack of conventional fleet assets, the U.S. military will be forced to choose between engaging the sizable Chinese combatant fleet or the Chinese merchants. In such a scenario, counter-force operations against the Chinese navy will likely trump commerce raiding, and business will continue as usual for Chinese commerce vessels. If the United States were to pursue a commerce raiding strategy using low-cost assets, China would face the decision of either losing these prized commercial vessels or risking its forces outside their bastion defensive zones to defend their economy.

¹ Based on country ownership and cargo volume. "China-owned fleet becomes world's second largest," Hellenic Shipping News, 13 September 2018, <https://www.hellenicshippingnews.com/china-owned-fleet-becomes-worlds-second-largest/>

U.S. operational maritime leaders need a cost-effective, non/low-kinetic means to target this commercial fleet that does not decrease their own needed combat power. A revival of U.S. privateering would leverage U.S. strengths in contractor support and global reach against our adversary's economic dependencies on the global maritime commons to generate high benefits at low costs. Privateering as a strategic distraction would create a horrible dilemma for the enemy and disrupt their maritime war strategy, easing the combat burden of U.S. forces. An analysis of the background on U.S. privateering, its legality, comparison of the costs and benefits, and recommendations for its revival will show that privateering is a viable method for conducting commerce raiding in the modern era.

U.S. Privateering Background

Until the dawn of the 20th century, the United States was a weak naval power compared to its European rivals. It lacked the funds and equipment to directly challenge most nations at-sea. As such, it was forced to pursue a strategy of *guerre de course* using large numbers of privateer vessels to provide some form of maritime response during the American Revolution and the War of 1812 against the far superior British naval forces. U.S. privateering, as the preferred method of commerce raiding, met with relative success in affecting the British in both these wars. Privateers of the American Revolution captured or destroyed over 600 British ships, and caused all four of the major British West India merchant companies to fail.^{2,3} Even more dramatic effects were seen in the War of 1812 where U.S. privateers seized at least 1,500 British

² Frayler, John, "Privateers in the American Revolution," Stories From The Revolution. National Parks Service / Salem Maritime National Historic Society, accessed 2 February 2019.
https://www.nps.gov/revwar/about_the_revolution/privateers.html

³ Hutchins, Todd Emerson, "Structuring a Sustainable Letters of Marque Regime: How Commissioning Privateers Can Defeat the Somali Pirates," California Law Review, Volume 99, Issue 3 (June 2011): 848.

vessels and helped tie up half of Britain's global fleet of 350 warships in operations against the United States.⁴ In both of these cases, privateering was a successful low-cost supporting effort that forced the British to disperse their fleet away from supporting ground operations.

The Declaration of Paris of 1856 is significant for its attempt to ban privateering worldwide, with the notable non-signatory of the United States.⁵ In the wake of the Crimean War, British and French diplomats crafted this agreement out of fear that weaker powers like the United States and Russia would degrade their naval supremacy.⁶ The United States recognized that its developing naval forces were still ill-equipped to counter the advanced European navies and were unwilling to give up this key capability.⁷ During the subsequent U.S. Civil War and Spanish-American War, the United States expressed a reluctance to use privateering, mainly due to concerns over third-party intervention, but still made efforts to retain it as a potential tool of warfare.^{8,9}

⁴ Elleman, Bruce A., Paine, S. C. M., editors, *Commerce Raiding: Historical Case Studies, 1755-2009* (Newport: U.S. Naval War College Press, 2013) 67-68.

⁵ Ronzitti, Natalino, *The Law of Naval Warfare* (Dordrecht: Martinus Nijhoff Publishers, 1988), 61.

⁶ Hutchins, "Structuring a Sustainable Letters of Marque Regime," 855.

⁷ Savage, Carlton, *Policy of the United States Toward Maritime Commerce in War: Volume I 1776-1914* (Washington, Department of State, 1934) 378-381.

⁸ As an example, during the U.S. Civil War, Lincoln's cabinet made plans to use privateers to counter potential British intervention in the crisis, despite the highly aggressive counter-privateer campaign the Union Navy was executing against Confederate privateers.

Parillo, Nicholas, "The De-Privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century," *Yale Journal of Law & the Humanities*, Volume 19, Issue 1 (8 May 2013): 4.

⁹ The first substantive efforts to bar the use of U.S. privateers came during the Spanish-American War when to dissuade privateer use by Spain, another non-signatory of the 1856 Declaration of Paris, U.S. President McKinley issued a proclamation the U.S. would adhere to international standards and not conduct privateering. However, it's important to note that the United States took no further action to more formally prohibit or outlaw privateering other than this early precursor to an executive order. In fact, both the United States and Spain employed merchant vessels commanded by commissioned officers in taking prize vessels as part of blockading operations, despite declarations that neither side would conduct privateering. Nevertheless, these "volunteer navies" avoided the stigma of privateering while executing the same basic functions.

Hutchins, "Structuring a Sustainable Letters of Marque Regime," 859.

Savage, *Policy of the United States Toward Maritime Commerce in War*, 486-487.

At the turn of the 20th Century, privateering as a commerce raiding tactic fell to the wayside as technological developments in large-volume shipping, naval gunnery, submarines, and torpedoes made it more effective to destroy an adversary's shipping rather than taking it. The quintessential example of this was the U.S. submarine fleet of WWII that took Japan from a pre-war merchant tonnage of 6.7 million down to 700 thousand "serviceable tons" at the end of the war; a 90% reduction even with replacement vessels.¹⁰ A force comprising less than 1% of the Navy's total personnel effectively eliminated an adversary's maritime commerce fleet.¹¹

However, the WWII submarine fleet consisted of 288 platforms, far surpassing the modern-day fleet of less than 60 attack submarines.^{12,13} U.S. manufacturing advantages over Japan during the war ensured that there was ample support for both a large conventional fleet, a robust merchant fleet, and a credible commerce raiding capacity. For future conflicts, the United States likely will not enjoy this level of overwhelming construction advantage compared to a great power peer like China and will be required to make tough choices on force structure. But the United States has some key advantages in the modern era that can help ease this burden, such as its robust network of allies, global force projection capacity, leadership in the international community, and its expansive use of contractor personnel and private military corporations (PMCs). The United States can leverage these advantages by returning to its privateering roots,

¹⁰ Elleman, Paine, *Commerce Raiding: Historical Case Studies*, 234, 236.

¹¹ Ibid, 234, 236.

¹² Gruner, William, "U.S. Pacific Submarines in World War II," San Francisco Maritime National Park Association, accessed 2 February 2019. <https://maritime.org/doc/subsinpacific.htm>

¹³ Heginbotham, Eric, *The U.S.-China Military Scorecard: Forces, Geography, and the Evolving Balance of Power 1996-2017*, (Santa Monica: The RAND Corporation) 37.

and creating a unique force application long dismissed by Mahan-obsessed Chinese counterparts.¹⁴

Privateering is Legal

All discussions on privateering require an understanding of its definition and legality. One of the clearest definitions of privateering comes from a maritime dictionary written in 1769 that defines it as a “privately owned vessel, fitted out and armed in wartime ‘to cruise against and among the enemy, taking, sinking or burning their shipping’ in exchange for shares of any captured prizes.”¹⁵ Privateering is not piracy. While both are in part motivated by monetary rewards, privateering differs from piracy in that it benefits a nation-state, under both their oversight and direction. It is a legal operation whose practice is shaped by both domestic and international law.

From a domestic perspective, the U.S. Constitution grants Congress the authority to issue Letters of Marque and Reprisal, which enable private entities to raid shipping of designated countries.¹⁶ This inherent authority of Congress, while dormant since WWII, remains a foundational piece of U.S. maritime law. Similarly, the U.S. Federal Code stipulates privateering is only illegal if conducted/orchestrated by U.S. citizens against U.S. personnel or their property.¹⁷ Combined, these portions of domestic law ensure that Congress controls any

¹⁴ James R. Holmes and Toshi Yoshihara provide many clear examples of Chinese preference for Mahanian strategies in their books *Red Star Over the Pacific: China's Rise and the Challenge to U.S. Maritime Strategy* (revised 2018) and *Chinese Naval Strategy in the 21st Century: The turn to Mahan* (2008) but the below citation provides a shorter summary.

Holmes, James R., “China's Way of Naval War: Mahan's Logic, Mao's Grammar,” *Comparative Strategy*, Volume 28, Issue 3 (July 2009), 221-223.

¹⁵ Elleman, Paine, *Commerce Raiding: Historical Case Studies*, 34.

¹⁶ “The Constitution of the United States,” Article 1, Section 8, Clause 12.

¹⁷ Office of Law Revision Counsel, “United States Code” 18 U.S.C. ch. 81 § 1654 (1994). <http://uscode.house.gov/>

entity wishing to conduct privateering and that these efforts are only against non-U.S. interests. The U.S. Federal Code Title 10 authorities provide a clear roadmap for re-establishing privateering practices, to include: explicit details on prize courts, seizure responsibilities, transfer and sale of seizures, and rights of cobelligerents in executing seizure functions.¹⁸

Of note, Title 10 states the authority to disperse funds from the sale of a vessel is at the sole discretion of the Treasury Department. This is important when we define the modern privateer as a contractor, which at its most basic element is an entity (business, person, etc.) that enters into an agreement with a government. There is a tendency to limit contractors to merely pay-for-service arrangements, but contracting can be inclusive of a prize-model where the business entity derives its payment from the sale of captured prize vessels, not a stipend from the government. This mechanism of fund disbursement provides a key performance incentive whereby only effective crews receive rewards and limits U.S. financial burden.

The body of international law regarding privateering is far less accommodating, but privateering is still acceptable with proper control mechanisms. The most prominent piece of international law on privateering is the Declaration of Paris of 1856 that notionally “abolished privateering.”¹⁹ As previously mentioned, the United States was not a signatory of this

¹⁸ Ibid, 10 U.S.C. ch. 883 § 8851-8881 (2018).

¹⁹ Imperial Britain undertook a similar attempt to impede commerce raiding comparable to the Declaration of Paris with the London Submarine Protocol of 1936. It attempted a de facto ban on unrestricted submarine warfare by requiring all submarines to provide for the safety of the impacted merchant crew before sinking, an untenable requirement. While it’s the prerogative of the hegemon to define the world order, there is no requirement for the rest of the world to abide. Although the United States was a signatory to the protocol, when faced with the onset of WWII, it was quick to revise its stance on this agreement. Chief of Naval Operations at the time, Admiral Harold Stark, was the principal author of “Plan Dog” regarding the U.S. strategy leading into WWII. Admiral Stark recognized in November 1940 that the principal theater of war would be Europe. Thereby, a delaying action against Japan would be required using an “economic war of attrition.” The only way to accomplish this was an economical use of force employing unrestricted submarine warfare. President Roosevelt agreed, and by November 1941, the United States had approved and implemented this new paradigm, despite the international agreement. The important lesson is that when faced with a peer rival, the United States was willing to take on a revisionist legal interpretation to achieve victory.

Elleman, Paine, *Commerce Raiding: Historical Case Studies*, 226-28.

agreement, but the majority of current NATO members were.²⁰ Due to their pre-dominantly colonial status at the time, no African nations were signatories, and the only Asian signatory was Japan. Only eight Central and South American nations signed the agreement, notably lacking Colombia and its modern-day offshoot Panama as signatories. Key U.S. allies Canada and Australia also did not sign due to their status as British possessions at the time. Only 52 nations signed the agreement, of which 28 eventually became modern Germany and Italy. The Declaration of Paris falls far short of a worldwide consensus.

However, many still consider privateering banned due to international customary law based on both practice (“consistent conduct”) and *opinio juris* (“belief”) of nation states.²¹ T.E. Hutchins, a U.S. Naval JAG officer, provided a comprehensive rebuke of these claims in the *California Law Review*.²² Regarding practice, the most compelling evidence he provides is that the declining practicality of privateering drove its abandonment as naval prowess grew globally, not legal restrictions. For *opinio juris*, the British and French assessment that the Declaration of Paris failed to create a customary international law obligation, done to enable tacit support to Confederate privateers during the U.S. Civil War, highly degrades the universal applicability of this agreement.²³ The key takeaway is the Declaration of Paris is by no means the definitive “nail in the coffin” for privateering.

Another key shaping document regarding international law is the Hague Convention of 1907, specifically agreement VII relating to the conversion of merchant ships. As was seen during the Franco-German War, Spanish-American War, and the Russo-Japanese War, to skirt

²⁰ Ronzitti, *The Law of Naval Warfare*, 61.

²¹ Hutchins, “Structuring a Sustainable Letters of Marque Regime,” 863.

²² Ibid, 863-867.

²³ Ibid, 856.

the restrictions of the Declaration of Paris, nations would arm merchants, enlist the crew, and raise the national ensign to conduct privateering operations.²⁴ Privateering remained alive and well, just executed under another name: “volunteer navy.” The issue arose in that some nations, specifically Russia during the Russo-Japanese War, were less than diligent in their control of these new commerce raiding entities.²⁵ No nation at the time had any serious issue with the concept of privateering using volunteer navies, but there was a call to standardize their use. The Hague Convention established that these converted merchants would be clearly marked, under the command of a commissioned officer with a crew subject to military authority, listed on the national roster of warships, and subordinate to the oversight and control of the sponsoring nation, which was responsible for the actions of the vessel and its crew.²⁶ The requirements of the Hague Convention are reasonable boundaries for modern privateering efforts. Of note, while the United States was a non-signatory of this agreement, it did accede to it eventually with the rigorous stipulation that it refused to renounce privateering.²⁷

Collectively, more modern international law efforts such as the Geneva Protocols of 1977 and the United Nations Convention on the Law of the Sea (UNCLOS) add little to the conversation on the use of privateers aside from the broader issue of using contract personnel in war.²⁸ The impact of this collective body of international law is that it is legally feasible for the United States to conduct privateering if executed reasonably and responsibly.

²⁴ Ibid, 857.

²⁵ Ibid, 859.

²⁶ Ronzitti, *The Law of Naval Warfare*, 114-119.

²⁷ Hutchins, “Structuring a Sustainable Letters of Marque Regime,” 860.

²⁸ Articles 43 and 47 of the 1977 Additional Protocols for the Geneva Convention define armed forces and mercenaries, respectively. However, while the United States generally supports the Geneva Protocols, these two articles are not followed due to their ambiguity. The U.S. Naval War College Stockton Center of International Maritime Law produces a guide to delineate areas of U.S. disagreement, and cites that definitions from these two articles introduce doubt due to their basis on “the personal or political motivations of the individual in question.”

High Benefits of Privateering

Privateering can have dramatic effects on an adversary. As seen in historical examples, privateering compels enemy combat units to relocate further away from preferred operating locations, can be speedily implemented and can reinforce the alliance between co-belligerents. These are all very tangible, high-value benefits for the United States in the event of a war with a peer nation.

China is building its empire on trade, as all would-be hegemonies before them. Over 90% of Chinese trade by volume and 65% by value uses the maritime domain along key sea lines of communication (SLOCs) connecting China to the rest of the globe.²⁹ China for its part recognizes that their export-driven economy is susceptible to disruption and requires the capability to defend these SLOCs, particularly to ensure their access to energy.³⁰ However, China relies on importing almost 78% of its fuel from countries outside its multi-layered defensive screen in areas prone to either U.S. diplomatic or kinetic interference.³¹ Any challenge

To state that a modern U.S. contractor is motivated solely by profit is an egregious mischaracterization of the patriotism of these individuals serving around the globe in dangerous circumstances. Similarly, UNCLOS attempts in Article 110 Right of Visit to limit when and how seizures should take place at-sea, but limits its definitions to solely non-wartime environments. Again, poorly thought out and worded international agreements preclude full U.S. endorsement and participation. Neither document takes any measures to constrict future privateering efforts. Ronzitti, *The Law of Naval Warfare*, 721-722, 724-725.

U.S. Naval War College Stockton Center, “Additional Protocol I (AP 1) to the Geneva Conventions of 1949: A Review of Applicable US References” (Newport: U.S. Navy War College), 12. <http://usnwc.libguides.com/LOAC-IHL>

United Nations, “United Nations Convention on the Law of the Sea,” 10 December 1982, 63. http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf

²⁹ Office of Naval Intelligence, “The PLA Navy: New Capabilities and Missions for the 21st Century,” 2015, 11. https://www.oni.navy.mil/Portals/12/Intel%20agencies/China_Media/2015_PLA_NAVY_PUB_Print_Low_Res.pdf?ver=2015-12-02-081233-733

³⁰ State Council Information Office of the People’s Republic of China, “China’s Military Strategy,” May 2015, 6. <https://jamestown.org/wp-content/uploads/2016/07/China’s-Military-Strategy-2015.pdf>

³¹ Assessment on capability to interfere based on relative geographic position or historic diplomatic ties to either U.S. or China. Fuel import data courtesy of the WITS database from the World Bank.

World Bank, “World Integrated Trade Solution Database,” 2017. https://wits.worldbank.org/CountryProfile/en/Country/CHN/Year/2017/TradeFlow/Import/Partner/by-country/Product/27-27_Fuels#

to this required source of energy or other vital trade elements would be quick to draw the attention of China and force a decision to risk combat units in areas where they lack a defensive advantage. Privateering efforts by the British and the French during the Seven Years War (1756-1763) provides a compelling historical comparison where the dispersed global British fleet was able to bring ruin to the French merchant fleets in the Caribbean and European waters.³² China, like France before it, will need to secure its SLOCs or face a similar fate. But every Chinese ship that ventures outside the Second Island Chain or surveillance asset fixed on a distant portion of the globe to find a privateer is one less platform being used to fight the United States in the Pacific.

The potential speedy establishment of a privateer force is another key benefit for an attacking entity. In the past, any potential U.S. privateer had a relatively streamlined process for both applying for a Letter of Marque and a relatively low technological barrier for entry to become a certified commerce raider. As such, their en masse early employment in a conflict often beat out the conventional forces still mobilizing. Consider the Seven Years War again, in 1755 the British privateering fleet took over 300 vessels in the ten months preceding the formal declarations of war, thereby “crippling the enemy's finance at the critical moment of mobilization.”³³ British Parliament deserves much credit for anticipating the need to revamp both privateering authorization processes and prize court ruling expediency, both of which are key to quickly implementing a commerce raiding plan.

Another key benefit of privateering is its potential ability to reassure alliances. The U.S. Federal Code provides great detail on the rules for conducting a prize court, to include reciprocating the rights of Australia, Canada, India, New Zealand, and the United Kingdom in

³² Elleman, Paine, *Commerce Raiding: Historical Case Studies*, 20.

³³ *Ibid*, 11.

seizing a prize.³⁴ The alliance that commandeers together, wins together. There's no reason not to expand this list of participants to include other long-term allies and partners both in and out of the Pacific theater. This would serve to greatly expand the global support of privateer forces by providing them a network of resupply and maintenance bases or prize courts to offload seizures expediently. Expanded participation would also help reduce the impacts on seized cargo of non-belligerents onboard Chinese vessels by providing forward locations and vessels to facilitate their subsequent shipment, assuming it was not in support of the enemy and its economy.

For their part, any nation participating in privateering against a U.S. adversary would demonstrate their commitment and could potentially gain large fiscal or material rewards from participation. South Korea, Japan, Germany, and Singapore are all top ten owners of global shipping, based on both weight and number of vessels, and would benefit greatly from reducing the competition, doubly so if the seized ships became part of their inventory.³⁵ From a strategic sense, it would also provide the United States with a low-key litmus test to determine who is willing to commit to the U.S. position in a conflict in theaters outside major combat force employment.

Low Tangible Costs of Privateering

One of the biggest advantages of privateering is that it generates a net gain in resources for the nation conducting it. The gains from these prizes usually exceed the minor financial, manpower, or shore-side support requirements. These minimal costs have little to no impact on

³⁴ Office of Law Revision Counsel, "United States Code" 10 U.S.C. ch. 883 § 8851-8881 (2018). <http://uscode.house.gov/>

³⁵ United Nations Conference on Trade and Development (UNCTAD) Stat, "2018 e-Handbook of Statistics Merchant Fleet," 5 December 2018. <https://stats.unctad.org/handbook/MaritimeTransport/MerchantFleet.html>

the conventional military force that is needed to directly respond to the combat force of a peer adversary.

Privateering, if executed correctly, is a self-financing mission for a nation. The key is to establish contracts and a set of norms with privateers that clearly and equitably distribute the rewards based on the risk assumed and the expected output of support. Efficient privateering operations join the support of a nation, which provides prize court functions, prioritization, and authority to operate, with a private enterprise motivated by both patriotism and profit, which provides the vessel, crew, and all expenditures. Rewards are only reaped in this symbiotic relationship when the two sides come together to claim a prize vessel. The government is under no requirement to provide dispensation to a privateer who fails to claim a prize, and the privateer is obligated to ensure its vessel is operating in-line with the expectations of its sponsor nation. The risk is high for the privateer, but so are the fiscal rewards. The Chinese-owned merchant fleet represents 9% of total worldwide merchants globally with an average value of \$12.5 million per vessel.^{36,37} Any of the 5,512 merchant vessels owned by China roaming in a peripheral theater represent soft targets for enterprising privateers, and with its global production share of 36%, more and more potential prizes are being built and operated by Chinese companies every day.³⁸ This creates a target rich environment for the privateer.

Another important low-cost feature of privateering is its minimal manpower cost. In his classic criticism of privateering, Mahan was quick to note that historically privateering efforts drew a select group of highly trained personnel, sailors and shipbuilders, away from the more

³⁶ UNCTAD Stat, “Maritime Profile: China,” 19 November 2018.
<https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/156/index.html>

³⁷ UNCTAD Stat data provided by The Maritime Executive, “The Global Fleet Revealed,” 5 November 2017.
<https://www.maritime-executive.com/article/the-global-fleet-revealed>

³⁸ UNCTAD Stat, “Maritime Profile: China,” 19 November 2018.
<https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/156/index.html>

vital task of maintaining both maritime commerce and conventional battle fleets.³⁹ While definitively true for historical privateering, due to increased automation, crews of modern vessels are significantly smaller, potentially as few as a dozen, thereby dramatically reducing the number of personnel needed to both operate the prize vessel and detain the captured crew. The prize crew, under the supervision of a U.S.-national prize master and detainee team, could be sourced from an international pool of personnel, reducing the manpower competition for U.S. merchant fleet sailors. The detainee team, required to secure the captured crew, can be readily sourced from the large-pool of U.S. veterans and established contract labor with experience in U.S. Middle East engagements over the past two decades. The final source of required personnel is rooted in the Hague Convention stipulations that require a commissioned officer on board to execute privateering functions. The potential solution to this is the 3,700 personnel that make up the O-3 to O-5 ranks of the reserve Surface Warfare Officer and Strategic Sealift Officer communities.⁴⁰ A small cadre of this pool of personnel could be trained to spearhead commerce raiding strategies and utilized in time of war to represent the authority of the United States at-sea for privateering operations with potentially as little as one officer per privateer vessel.

The last key expenditure to consider is the shore-side support to privateers. Privateering, like all forms of commerce raiding, requires targeting support to be effective. The safest place to capture a vessel is on the high seas far from any potential rescuer, but the ocean is a wide common, and it is often difficult to find merchant prey. During WWII, U.S. interdiction efforts with submarines were so brilliantly successful because of the cueing support they received from

³⁹ Elleman, Paine, *Commerce Raiding: Historical Case Studies*, 29.

⁴⁰ Data derived from the Naval Register consisting of the USN reserve designators for Surface Warfare Officers (1115), Strategic Sealift Officers (1665), and Limited Duty Officers (LDO) Surface Operations (6125) dated 8 March 2019.

shore-side codebreakers.⁴¹ U.S. targeting support to privateers, depending on the number of crews supported, could likely be accommodated with existing intelligence reserve personnel using already established Maritime Domain Awareness (MDA) sensors and architecture. However, even if the support demand signal was unexpectedly large, the privateers themselves could fund appropriately cleared contract personnel to provide that same support using existing U.S. systems. This would be a minimal expense based on the large sums of money that would be on the line for taking a prize vessel. The second key shore-side support mechanism is access to port facilities. Being commissioned as part of a lease arrangement as a United States Ship (USS), another stipulation required by the Hague Convention, would open the door for privateering vessels to access the global port network enjoyed by traditional warships. This would prevent issues regarding sustainment like those faced by Confederate privateers in the Civil War and Russian privateers in the Russo-Japanese War which greatly limited the effectiveness and duration of both endeavors.⁴²

Hidden Downsides of Privateering

While the material and manpower costs of privateering may be low compared to traditional wars-at-sea, history shows that there are hidden costs which can lead to unfortunate outcomes. The intangible costs to a nation's prestige, impact on the international system, and risk of miscalculation are significant, but understanding and careful mitigation of each of these concerns can reduce their effect.

⁴¹ Elleman, Paine, *Commerce Raiding: Historical Case Studies*, 222.

⁴² Ibid, 77, 124.

Privateering, as noted by Mahan and others, has always been the strategy of a weak naval power.⁴³ The hallmark of a great maritime power is a large battle fleet designed with the sole objective of crushing any rival powers. The creation of these mighty fleets drove the disappearance of privateering in the 19th Century. Any nation that resorts to privateering, which is often seen more as piracy than honorable combat, could potentially send a signal both internationally and domestically that they are an enfeebled naval force.

But this line of thinking is a matter of prestige, not operational effectiveness. Winning is what matters, and if privateering can help win a peer fight, then the United States is honor-bound to pursue it despite the perceived cost to their image. Using this strategy of the weak could provide a benefit as well. A decision to pursue privateering may spark interest from the U.S. Congress and lead to increased concern over high-end warfighting capabilities, resulting in a call for increased conventional war-at-sea capabilities, a move likely to be welcomed by most of the U.S. Navy.

A greater concern for using privateering is the impact its use may have on degrading the international order. The United States has been a beacon of stability since the end of WWII in ensuring a rules-based world. Some say privateering flies in the face of some of those long-established practices. Britain's use of privateering during the Seven Year's War, while effective against a peer adversary, was in perpetual danger of turning the neutral nations of the world against them.⁴⁴ Significant diplomatic wrangling was necessary to ensure global support. Comparably, China, which is always quick to call out perceived hypocrisy of the U.S. for violations of international standards, would expediently decry the use of modern privateers to the nations of the world.

⁴³ Ibid, 29, 287.

⁴⁴ Ibid, 15.

The rebuttal to this potential Chinese criticism is that the United States is the current steward of an international maritime stability system going back to the 18th Century that ensured the global maritime commons were open to all. As such, the United States would only use privateering if an adversary were to challenge the very nature of this system, as China routinely does in the South China Sea and other contested areas. Revitalizing privateering would remind that adversary of the world that existed before a rules-based system, and hints at what the world would return to if China or others toppled it. Illuminating the hidden implications of China's revisionist maritime agenda could thereby help ensure a greater global commitment to the current maritime system of rules.

One of the more dangerous implications for privateering's hidden costs is the risk of great power miscalculation. If privateering were to succeed in adequately threatening China or another peer rival, it would inherently draw some response. Historically, the go-to responses for privateering have been counter-force operations, use of convoys, and attempts to blockade privateering vessels in port. The British used all three of these options during the Napoleonic Wars with moderate success against the French.⁴⁵ However, this was a world before nuclear weapons. The direct implications for privateering on the core domestic economic stability interests of China would entice them to ensure regime stability through escalation, which opens the door to miscalculation. The concern is that China could use long-range strike operations, nuclear or otherwise, to go directly after the homeland of any privateering nations.

Any time two great powers exchange fire in the modern era, the risk of vertical escalation is inherent. Since privateering would only be an applicable use of force after the commencement of hostilities, any event that was likely to spark nuclear war would potentially already have

⁴⁵ Ibid, 50.

occurred, likely in the main theater of war. Despite its targeting of the enemy economy, the low-kinetic nature of privateering boarding operations in a peripheral theater is less likely to push an adversary up the escalation ladder. Instead, horizontal escalation is more likely to occur, and the adversary follows the lead of Imperial Britain in countering privateers. Ideally, using privateering against China in a war would spark a counter-force response where Chinese naval combatants venture outside their protective bubble, thereby leaving these key assets vulnerable to conventional U.S. maritime strike assets. If China instead decides to use convoys to defeat privateering, that would achieve the same ends where combat forces are venturing outside their defensive bastions. Focusing on the bases and ports of U.S. privateers could meet with success, at least if they pushed diplomatically on the system of U.S. allies that were providing those global ports. However, attempting to strike these ports with military forces would only expose Chinese units to destruction and international backlash. Lastly, if China were to conduct reprisal privateering against U.S. merchants, it would find its efforts greatly limited due to their lack of global allies and ports needed to sustain these operations abroad.

Conclusion

Anyone who has stared at the China problem long enough recognizes that militarily the United States has a range and lethality problem that is not likely to be fixed in the near-term. China's growth in maritime power, both civil and military, continues to outpace the United States. Efforts to build technological solutions are in the works but securing these advances from the eyes of our enemy is a never-ending problem. Beijing's willingness to outspend the United

States routinely stymies diplomatic and economic initiatives. If the United States cannot outbuild, outspend, or outkill their adversary, then they must outthink them.

Privateering, despite its grandiose illusions to a bygone era of swashbuckling, does have the potential to draw down the force advantages of our peer adversaries, and the United States needs any advantage it can get in that fight. It will work because it is something unforeseen by the adversary; they have not considered it because the world has not thought of privateering since the 19th Century. For privateering the benefits are high, the material costs are low, and the intangible risks are manageable.

Recommendations

A serious effort is needed to understand how the United States will conduct commerce raiding writ large, which has been a feature of every major great power conflict for the last 300 years, to include privateering as a supporting tactic. As such, the first step should be establishing a unit tasked to organize the Navy's commerce raiding fight. This would provide a dedicated group of personnel, preferably a hybrid of active duty, reserve and full-time support (FTS), to actively investigate and implement privateering or other commerce raiding tactics. Using lessons learned from the Law Enforcement Detachments (LEDETs) program for joint counter-drug interdiction efforts between the U.S. Navy and Coast Guard, as well as a generation of boarding operations in support of UN counter-proliferation resolutions, this command should wrestle through the authorities of a joint reserve and contractor force operating a vessel leased to the U.S. government. Personnel from Navy Reserve units supporting Naval Co-operation and Guidance for Shipping (NCAGS) could be recruited to man this effort and increase buy-in from

the larger merchant community. Nesting this command under Naval Expeditionary Combat Command (NECC) would align with other asymmetric capabilities the Navy employs globally.

The second recommendation is to work with the U.S. Navy Judge Advocate Corps and reach out to congressional and executive branch partners in the Federal Court system to discuss the legal hurdles with issuing letters of marque, rules of engagement and prize court functions. While Title 10 provides some very clear guidance on how to conduct prize-related activity, privateer-specific law has been inactive for 200 years and needs updating to implement a modern program. It is essential that all this groundwork is laid now; waiting until an actual crisis emerges will result in missed operational opportunities. Congressional outreach is also essential as part of re-sensitizing the American public to the notion of privateering and establishing the pressing military need for the program.

The third recommendation is to engage with our international partners and allies to gauge their view on privateering in the modern security environment. As history has shown, privateering success or failure often hinges on the role of neutral and third-party nations. While feasible to conduct major privateering operations without foreign basing options, it would be far preferable to have allied logistic and diplomatic support in these endeavors. Additionally, international engagement, led by the unit tasked with building the U.S. commerce raiding capacity, could be used to strengthen the training opportunities of smaller navies which are more often concerned with executing boarding procedures than major combat operations.

The last recommendation is to solicit PMC industry feedback on privateering to identify the explicit details on how to conduct this military-civilian operation. Many discussions on training requirements, contract structure, prize adjudication, minimum operational capacity, rules of engagement (ROE), prisoner of war status, risk tolerance and a host of unforeseen issues need

to take place. The goal would be to accrue a list of potential well-established PMCs who could mobilize a viable privateering fleet on short notice.

These recommendations are non-committal. Pursuing them will only streamline the process in case the United States ever decides it needs a privateering force. Aside from a few personnel to establish a small command, the costs are mainly time, effort, and will. Given the potentially dramatic effects privateering could have, these are small costs to pay.

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